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Bacha Bazi and Human Rights Violations in Afghanistan: Should the U.S. Military Have Done More to Protect Underage Boys?

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BACHA BAZI AND HUMAN RIGHTS VIOLATIONS IN
AFGHANISTAN: SHOULD THE U.S. MILITARY HAVE DONE
MORE TO PROTECT UNDERAGE BOYS?

Annie Barry Bruton¹

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I. INTRODUCTION

In January of 2018, a report on the “investigation into child sexual abuse by Afghan security forces” and U.S. military inaction was “released . . . by the Special Inspector General for Afghan Reconstruction, known as Sigar.”² The “heavily redacted” report, which was commissioned under the Obama administration, did little to address the prevalence of child sexual abuse in the Afghan military and police and how often the U.S. military “looked the other way at the widespread practice.”³ The practice, known as bacha bazi or “boy play,” has existed in Afghanistan since antiquity and includes a wide array of sexual activities between older men and young boys.⁴ The practice has been known to consist of sexual slavery and child prostitution, where force and coercion are common.⁵ Afghan security officials often claim they are unable to end such practices because many of the men involved in bacha bazi are powerful and often prominent members of the government, police, and military forces.⁶

Under current legislation, “United States military aid funds must be cut off to any foreign military unit implicated in gross human rights violations, which [presumably] includes . . . bacha bazi.”⁷ In 2014, however, Congress authorized a special waiver for the Afghan Security Forces Fund called the “notwithstanding clause,” which allows U.S. military aid “notwithstanding any other provision of law.”⁸ This clause has since “been used repeatedly to evade cutting off military aid to Afghan units” despite widespread knowledge of the practice of bacha bazi.⁹ Following national outrage in early 2018,¹⁰ Congress quietly removed the “notwithstanding” language.¹¹ Congress continues to authorize funding, however, “that would otherwise be prohibited” if “a denial of such assistance would present significant risk to U.S. or coalition forces or significantly undermine United States national security objectives in Afghanistan.”¹²

There have been several high-profile cases of U.S. military members objecting to the practice, which members claim has since ended their career paths, including the incident in which then-Capt. Dan Quinn “beat up an Afghan commander for

² Rod Nordland, *Afghan Pedophiles Get Free Pass from U.S. Military, Report Says*, N.Y. TIMES (Jan. 23, 2018), <https://www.nytimes.com/2018/01/23/world/asia/afghanistan-military-abuse.html> [<https://perma.cc/29S5-ZQG3>].

³ *Id.*

⁴ *Id.*; see Louis Martin & Miriam Shaheen, *The Revival of Slave Boys in Afghanistan: A UK Perspective*, 178 CRIM. L. & JUST. WKLY. 193, 193 (Mar. 29, 2014).

⁵ See Martin & Shaheen, *supra* note 4, at 193–94.

⁶ See *id.* at 193.

⁷ Nordland, *supra* note 2.

⁸ Erica Gaston, *The Leahy Law and Human Rights Accountability in Afghanistan: Too Little, Too Late or a Model for the Future?*, AFG. ANALYSTS NETWORK (Mar. 5, 2017), <https://www.afghanistan-analysts.org/the-leahy-law-and-human-rights-accountability-in-afghanistan-too-little-too-late-or-a-model-for-the-future/> [<https://perma.cc/XPD4-76Y9>] (citing Department of Defense Appropriations Act, H.R. 2397, 113th Cong. (2014) (enacted)); see Nordland, *supra* note 2.

⁹ Nordland, *supra* note 2.

¹⁰ See *id.*

¹¹ Department of Defense Appropriations Act, H.R. 6157, 115th Cong. (2018) (enacted).

¹² *Id.*

keeping a boy chained to his bed as a sex slave.”¹³ He was promptly relieved of his command.¹⁴ Quinn maintains that “[w]e were putting people into power who would do things that were worse than the Taliban did.”¹⁵

This Note will analyze the dilemma that U.S. military members face in ignoring the cultural practice of bacha bazi or taking action against sexual predators, as well as the U.S. government’s actions—or, their inaction. Part I will provide a background analysis of the cultural phenomenon, as well as a background of sexual consent norms in the U.S. Part II will analyze the legal implications of the practice. Part III will explain current actions taken by the U.S. government. Finally, Part IV will provide a solution to force the end of the practice of bacha bazi or, at the very least, the end of U.S. funding of the government of Afghanistan.

II. CULTURAL PERSPECTIVE

A. Cultural Dilemma

Bacha bazi is not a new phenomenon. Its roots in Afghanistan can be tied to the late nineteenth century, although similar practices have been prevalent in Central Asia since at least the rule of the Ottoman Empire.¹⁶ The practice notably declined during the extremist rule of the Taliban,¹⁷ a group formed in the early 1990s by an Afghan faction of mujahideen, Islamic fighters who resisted the Soviet occupation of Afghanistan (1979–89) with the backing of the U.S., Pakistan, China, Iran, and Saudi Arabia.¹⁸ In the mid-1990s, the Taliban extremist group gained control of Kabul and, subsequently, the country, by forcibly hanging the former president.¹⁹ In 2001, a U.S.-led invasion toppled the Taliban regime, and bacha bazi returned.²⁰ In particular, growing poverty in Afghanistan since the beginning of U.S. military involvement became “a driving force in the rise of bacha bazi.”²¹ Widespread conflict and an economy significantly impacted by war has allowed predators to easily prowl the streets of large cities targeting young boys.²² These men may promise the boys’

¹³ Nordland, *supra* note 2.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ See Edmund Chow, *Some Hints on the History of Bacha Bazi (1865-1913)*, EDMUND CHOW BLOG (May 29, 2015), <https://edchow.wordpress.com/2015/05/29/some-hints-on-the-history-of-bacha-bazi-1865-1913/> [<https://perma.cc/7NW5-DY4E>].

¹⁷ Flora Drury, *The Secret Shame of Afghanistan's Bacha Bazi 'Dancing Boys' who are Made to Dress like Little Girls, Then Abused by Paedophiles*, DAILYMAIL.COM (Jan. 7, 2016, 4:26 AM), <https://www.dailymail.co.uk/news/article-3384027/Women-children-boys-pleasure-secret-shame-Afghanistan-s-bacha-bazi-dancing-boys-dress-like-little-girls-make-skirts-abused-paedophiles.html> [<https://perma.cc/GQN7-3SRU>].

¹⁸ Zachary Laub, *The Taliban in Afghanistan*, COUNCIL ON FOREIGN REL. (July 4, 2014), <https://www.cfr.org/backgrounder/taliban-afghanistan> [<https://perma.cc/R3ZW-8Q24>]; *Timeline: Taliban in Afghanistan*, AL JAZEERA (July 4, 2009), <https://www.aljazeera.com/news/asia/2009/03/2009389217640837.html> [<https://perma.cc/T2ZD-84RB>].

¹⁹ *Timeline: Taliban in Afghanistan*, *supra* note 18.

²⁰ *Id.*; Drury, *supra* note 17.

²¹ Drury, *supra* note 17.

²² *See id.*

families work or education, or they may kidnap the boys outright.²³ The practice has quickly gained popularity and widespread acceptance, most notably among powerful warlords, businessmen, and police.²⁴ Societal acceptance, or perhaps tolerance, is evident in the popular Afghan saying, “women are for children, boys are for pleasure.”²⁵

American policy with respect to bacha bazi has largely been a sensitive issue for lawmakers due to viewing the sexual abuse as a “cultural issue.”²⁶ In actuality, however, “[i]t is unacceptable morally and culturally to the majority of people in Afghanistan.”²⁷ Morally, bacha bazi is objectively reprehensible. Only the perpetrator of such crimes could find a way to justify it morally in their own, subjective way. In contrast, a practice being culturally unacceptable implies that society *as a whole* disapproves of the practice in question.²⁸ “Cultural values . . . deal with ‘knowledge art, belief and any other capabilities and habits acquired by man as a member of society.’”²⁹ The society as a whole, or at least the majority, condemns the practice.³ Those practicing bacha bazi are able to do so largely because of social status. They are members of government, police, or Afghan security forces, and oftentimes enjoy the protection of the U.S. government.³¹ Therefore, bacha bazi seems to be less of a “cultural issue” and more of an issue of systemic enablement by both the U.S. and Afghan government.

Because bacha bazi is a widespread cultural phenomenon, does the U.S. military have the right to interfere? “Only the U.N. Security Council has the legal power to enforce international law,” and if the U.S. exercises its right of veto, the Security Council has no power against it.³² The “right to interfere” question, however, lies more in the realm of whether intervention is “the right thing to do” than the legal realm of whether or not we can interfere.³³ Humanitarian intervention is nothing new. “The University of Pittsburgh’s Taylor Seybolt’s 2008 review of 17 U.S.-led interventions found that nine had succeeded in saving lives.”³⁴ For example, in April of 1991, “the United States began airdropping food, water, and blankets on the large refugee camps along the Turkish-Iraqi border that were sheltering Kurds displaced

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ See Joseph Goldstein, *US Soldiers Told to Ignore Sexual Abuse of Boys by Afghan Allies*, N.Y. TIMES (Sept. 20, 2015), <https://www.nytimes.com/2015/09/21/world/asia/us-soldiers-told-to-ignore-afghan-allies-abuse-of-boys.html> [https://perma.cc/NH2W-QZY7].

²⁷ Sayed Jalal Shajjan, *The Revised Afghanistan Criminal Code: An End for Bacha Bazi?*, LONDON SCH. ECON. & POL. SCI.: SOUTH ASIA @ LSE BLOG (Jan. 24, 2018), <http://blogs.lse.ac.uk/southasia/2018/01/24/the-revised-afghanistan-criminal-code-an-end-for-bacha-bazi/> [https://perma.cc/6TUA-AXX8].

²⁸ See *id.*, for a more in-depth discussion about the mischaracterization of bacha bazi as a “cultural issue.”

²⁹ *Id.* (quoting Michelle Schut & Eva van Baarle, *Dancing Boys and the Moral Dilemmas of Military Missions: The Practice of Bacha Bazi in Afghanistan*, in INTERNATIONAL SECURITY AND PEACEBUILDING: AFRICA, THE MIDDLE EAST, AND EUROPE 77, 79 (Abu Bakarr Bah ed., 2017)).

³⁰ *Id.*

³¹ See Nordland, *supra* note 2.

³² Lloyd N. Cutler, *The Right to Intervene*, 64 FOREIGN AFF. 96, 96 (1985).

³³ *Id.*

³⁴ Micah Zenko, *The Slippery Slope of U.S. Intervention*, FOREIGN POL’Y (Aug. 12, 2014, 12:04 AM), <https://foreignpolicy.com/2014/08/12/the-slippery-slope-of-u-s-intervention/> [https://perma.cc/KQ7A-WNAU].

by [the] Iraqi Republican Guard.”³⁵ These people were offered live-saving aid from the U.S. contrary to the government of Iraq, which had displaced them after putting down an uprising in the northern portion of the country in a particularly brutal manner.³⁶ This serves as an example of the U.S. government “doing the right thing.” Therefore, according to historical example, the U.S. appears willing to disregard international law and the decision making of individual countries in order to stand up for those most vulnerable.

B. Sexual Consent in the U.S.

In the U.S., the practice of bacha bazi is viewed as reprehensible due to the differences in how our society views sexual intercourse and consent, especially in the context of minors.³⁷ According to one scholar, “[o]ne clear way that [U.S.] law addresses sexual consent is through age of consent laws.”³⁸ “Every state prohibits by statute some kind of ‘consensual’ sexual activity between children and adults.”³⁹ “Most [American] states distinguish among sex crimes against children by the severity of the offense and the age of the child.”⁴⁰ That is, the younger the child the more serious the offense.⁴¹ These differences highlight the effort by U.S. lawmakers to “account[] for power and maturity differences between the ‘consenting’ parties.”⁴² These laws are largely created in order to deter criminal conduct and the exploitation of young children.⁴³ Especially in the case of statutory rape, American society demonstrates a distinct concern with not only holding the perpetrator accountable, but more importantly preventing “harm to our children.”⁴⁴ In this way, Afghanistan and the U.S. are distinctly different and therefore the aversion to the practice of bacha bazi amongst U.S. service members is logical. Service members are familiar with societal norms of sexual consent in America from a young age and it is no surprise that they have trouble balancing their understanding and acceptance of consent law with bacha bazi. In a similar situation in 2011, a twenty-two-year-old Eritrean immigrant in St. Louis was charged with first-degree statutory rape after it was discovered that he had impregnated a 12-year old girl.⁴⁵ Regardless of the law in

³⁵ *Id.*

³⁶ *Id.*

³⁷ This conclusion is inferred from the codification of statutory rape laws in the U.S. See generally Michelle Oberman, *Regulating Consensual Sex with Minors: Defining a Role for Statutory Rape*, 48 BUFF. L. REV. 703 (2000) (discussing the state of statutory rape laws in the United States).

³⁸ Judith Butler, *Sexual Consent: Some Thoughts on Psychoanalysis and Law*, 21 COLUM. J. GENDER & L. 3, 4 (2012).

³⁹ Jennifer Ann Drobac & Leslie A. Hulvershorn, *The Neurobiology of Decision Making in High-Risk Youth and the Law of Consent to Sex*, 17 NEW CRIM. L. REV. 502, 513 (2014).

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ See *id.* at 515, 522 n.58.

⁴⁴ *Id.* at 515.

⁴⁵ Jennifer Mann, *Culture, Law Clash in Statutory Rape Case Against Eritrean Immigrant in St. Louis*, STL TODAY: ST. LOUIS POST-DISPATCH (Apr. 15, 2012), https://www.stltoday.com/news/local/crime-and-courts/culture-law-clash-in-statutory-rape-case-against-eritrean-immigrant/article_3f31500b-85b6-524d-90e9-8cb59d52d186.html [https://perma.cc/VKN5-WPNF].

Eritrea, having sexual intercourse with a minor is a major crime in the state of Missouri.⁴⁶ The St. Louis Circuit Attorney remarked that “a serious crime against a child has occurred,”⁴⁷ reflecting a viewpoint which American society largely holds.

While the actual age of the underage boys subject to bacha bazi may not always be known, most are young teenagers and some even younger.⁴⁸ In a particularly disturbing account, 29-year-old Muhammed Duad described his calculated pursuance of a young boy of twelve, “[i]f you want a haliq”—a boy for sex—“you have to follow the boy for a long time before he will agree.”⁴⁹ He went on to describe that, through providing candy and money to the young boy, he was able to eventually convince the boy to become his lover.⁵⁰

III. LEGAL IMPLICATIONS: BACHA BAZI AND THE ALLIED COALITION IN AFGHANISTAN

A. U.S. Law

Sigar opened the investigation into child sexual abuse by Afghan security force “at the request of Congress and in response to a 2015 New York Times article.”⁵¹ The article alleged that U.S. soldiers were actively told to ignore the systematic sexual abuses of young boys and “described the practice as ‘rampant.’”⁵² A former Marine “recalled feeling sickened the day he entered a room on base and saw three or four men lying on the floor with children between them.”⁵³ The Marine communicated to his father that “[a]t night we can hear them [young boys screaming, but we’re not allowed to do anything about it.”⁵⁴ When the Marine complained to his superiors, he was told “to look the other way because it’s their culture.”⁵⁵

The Pentagon immediately denied any official policy instructing U.S. service members serving in Afghanistan to look the other way when confronted with Afghan abuse of young boys.⁵⁶ Pentagon spokesman Navy Capt. Jeff Davis informed reporters that “[w]e’ve never had a policy in place that directs any military or an government personnel overseas to ignore human rights abuses.”⁵⁷ Capt. Davis also

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ US DEP’T OF STATE, TRAFFICKING IN PERSONS REPORT 61 (June 2019), <https://www.state.gov/wjcontent/uploads/2019/06/2019-Trafficking-in-Persons-Report.pdf> [<https://perma.cc/4E9N-LHCP>].

⁴⁹ Craig S. Smith, *Kandahar Journal; Shh, It’s an Open Secret: Warlords and Pedophilia*, N.Y. TIMES (Feb. 21, 2002), <https://www.nytimes.com/2002/02/21/world/kandahar-journal-shh-it-s-an-open-secret-warlords-and-pedophilia.html?module=inline> [<https://perma.cc/QFQ2-DMPW>].

⁵⁰ *Id.*

⁵¹ Nordland, *supra* note 2.

⁵² *Id.*; see also Goldstein, *supra* note 26.

⁵³ Goldstein, *supra* note 26.

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ Kristina Wong, *Pentagon: No Policy to Overlook Afghan Abuse of Children*, HILL (Sept. 21, 2015, 3:06 PM), <https://thehill.com/policy/defense/254402-pentagon-denies-policy-telling-troops-to-overlook-afghan-abuse-of-children> [<https://perma.cc/2VHV-58GB>].

⁵⁷ *Id.*

stated that “‘there is nothing that would preclude any military member from making reports about human rights violations to their chain of command,’ but did not outline whether there were any policies to handle reporting of human rights abuses.”⁵⁸ The Pentagon, however, suggested that the issue of bacha bazi was “‘fundamentally’ a local Afghan law enforcement matter.”⁵⁹ The White House echoed a similar stance by stating that “[t]his form of sexual exploitation violates . . . Afghanistan’s international obligations.”⁶⁰ Effectively, both the Pentagon and the White House declined to take responsibility for inaction on the part of the U.S. government and instead shifted the blame to the Afghan government.

The Sigar report was completed in June 2017.⁶¹ Originally, the contents were considered to be “so explosive” that it was recommended to be withheld from the American public until June 9, 2042.⁶² The report evidences the failure of the U.S. government to meet the standard of the Leahy Law, the domestic law prohibiting the enabling of gross human rights violations by the U.S. government.⁶³ The term “Leahy Law” refers to statutory provisions prohibiting the U.S. government from using funds to assist units of foreign security forces where there is credible information implicating that unit in the commission of gross human rights violations.⁶⁴ Provision (c) of the Act governs the U.S. State Department while provision while (d)(3) of the Act governs the U.S. Department of Defense.⁶⁵ The U.S. government has found that torture, extrajudicial killing, enforced disappearance, and rape are all considered gross human rights violations.⁶⁶ As the practice of bacha bazi is nothing more than systematic rape and sexual abuse of young boys, Afghan actors caught in the practice, or at least reasonably suspected to have committed the practice, fall squarely within the intent of the provision. It is a clear violation of U.S. law to continue to allow funding for Afghan security forces and police. A particularly alarming fact is that before an individual security force is nominated for U.S. government assistance, the State Department is required to investigate the unit fully.⁶⁷ The U.S. Embassy is tasked with conducting “consular, political, and other security and human rights checks.”⁶⁸ In fact, in most cases, a further investigation is then conducted in Washington, D.C. by the Department of State itself in order to ensure a full examination of the unit in question.⁶⁹ With all this required preparation, it is absurd to assume that the U.S. government was unaware of bacha bazi when the funds for Afghan security forces were originally approved.

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ Nordland, *supra* note 2.

⁶² *Id.*

⁶³ *See id.*

⁶⁴ *Leahy Fact Sheet*, U.S. DEP’T STATE: BUREAU DEMOCRACY, HUMAN RIGHTS, AND LABOR, <https://www.state.gov/leahy-fact-sheet/> [https://perma.cc/UF3E-KA9J]; *see also* 22 U.S.C. § 2378d (2018).

⁶⁵ 22 U.S.C. § 2378d.

⁶⁶ *Leahy Fact Sheet*, *supra* note 64.

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

One manner in which the U.S. government recently circumvented the Leahy Law, as revealed by the Sigar report, was the reliance on the “notwithstanding clause,”⁷⁰ which stated that Afghan military aid should be available “notwithstanding any other provision of law.”⁷¹ This clause existed until 2018, when Congress quietly altered the language to authorize funding “that would otherwise be prohibited” if “a denial of such assistance would present significant risk to U.S. or coalition forces or significantly undermine United States national security objectives in Afghanistan.”⁷² The 2018 version of the Defense Appropriations Act does impose stricter requirements for waiving the Leahy Law, which includes a guarantee that the Secretary of Defense has “sought a commitment by the Government of Afghanistan to take all necessary corrective steps.”⁷³ The fact remains, however, that Congress is expressly authorizing U.S. funding which “would otherwise be prohibited by 10 U.S.C. 362 to a unit of the security forces of Afghanistan.”⁷⁴ These loopholes counter the application of the Leahy Law that cuts off valuable security partners, suggesting that the U.S. government prioritizes security above human rights in Afghanistan. A career Afghan policy scholar noted that “[w]hen there was a conflict between the counterterrorist agenda and anything else, the counterterrorist agenda won out.”⁷⁵ The overarching problem, therefore, is that the “notwithstanding clause” was only enacted by Congress in 2014, when the Afghanistan Security Forces Fund was first created in 2005.⁷⁶ This indicates that for approximately eleven years, the U.S. government knew, or should have known, due to the supposed extensive background investigation prior to the awarding of funds by the U.S. State Department, of the widespread practice of *bacha bazi*.

Although the Department of Defense and the State Department have taken steps to identify and investigate instances of *bacha bazi* in the wake of the Sigar report, it is clear that the U.S. government has failed to hold Afghan forces accountable for their crimes in order to fulfill national security interests.⁷⁷ According to the Sigar report, the Department of Defense’s “continuing to provide assistance to units for which the department has credible information of a gross violation of human rights undermines efforts by U.S. government officials to engage with the Afghan government on the importance of respect for human rights and rule of law.”⁷⁸ This presents the ultimate question to the U.S. as it moves forward in Afghanistan: which

⁷⁰ Nordland, *supra* note 2.

⁷¹ Department of Defense Appropriations Act, H.R. 2397, 113th Cong. (2014) (enacted).

⁷² Department of Defense Appropriations Act, H.R. 6157, 115th Cong. (2018) (enacted).

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *To Stabilize Afghanistan, U.S. and Partners Must Commit to the Long Haul*, U.S. INST. PEACE (Mar. 24, 2015), <https://www.usip.org/publications/2015/03/stabilize-afghanistan-us-and-partners-must-commit-long-haul> [<https://perma.cc/BX23-TZ9Y>].

⁷⁶ U.S. GOV’T ACCOUNTABILITY OFFICE, GAO-08-751, AFGHANISTAN SECURITY: U.S.-FUNDED EQUIPMENT FOR THE AFGHAN NATIONAL DEFENSE AND SECURITY FORCES 3 (2017), <https://www.gao.gov/assets/690/686477.pdf> [<https://perma.cc/8MJW-VZS7>]; see also Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005, Pub. L. No. 108-375, § 1202, 118 Stat. 2078 (2004).

⁷⁷ See Nordland, *supra* note 2.

⁷⁸ *Id.*

is of greater importance, protecting the young boys or protecting our interests in the region?

B. International Law

Following the atrocities of World War II, the international community committed itself to the development of the concept of universal human rights.⁷⁹ This effort culminated in a document known as the Universal Declaration of Human Rights (UDHR).⁸⁰ The UDHR was “[d]rafted by representatives with different legal and cultural backgrounds from all regions of the world” and stands “as a common standard of achievements for all peoples and all nations.”⁸¹ The document established a universal, international standard for human rights for the first time in history and “has been translated into over 500 languages.”⁸² In the 1980s, human rights activities by non-governmental organizations accelerated and policies concerning basic human rights began to be incorporated into states’ foreign policies.⁸³ The fall of the Soviet Union and “the end of the Cold War ushered in the [widespread] practice of humanitarian intervention, arising from a new geopolitical environment.”⁸⁴ In 1988, the UN General Assembly “adopted a resolution recognizing for the first time that private humanitarian organizations have a role to play” in emergency situations.⁸⁵ Next, in 1991, the UN General Assembly “passed a resolution creating a [] humanitarian aid coordinator” and “suggested that while the United Nations should try to win the consent of affected governments before sending aid, it is not necessarily prohibited from intervening if it fails.”⁸⁶ In this context, states expressed an increased willingness to deploy their armed forces in case of humanitarian emergencies or events of large-scale human rights violations. Further, the UN Security Council affirmed its right in January of 1991 to intervene in international situations in the future “by acknowledging for the first time the existence of ‘nonmilitary’ threats to peace and security ‘in the economic, social, humanitarian and ecological fields.’”⁸⁷

With respect to the U.S., a commitment to universal human rights has been a part of our national foreign policy since our adoption of the Geneva Convention treaties

⁷⁹ See *Universal Declaration of Human Rights: History of the Document*, UNITED NATIONS, <https://www.un.org/en/sections/universal-declaration/history-document/index.html> [<https://perma.cc/L5F7-DELY>].

⁸⁰ *Id.*; see G.A. Res. 217 (III) A, Universal Declaration of Human Rights (Dec. 10, 1948).

⁸¹ *Universal Declaration of Human Rights*, UNITED NATIONS, <http://www.un.org/en/universal-declaration-human-rights/> [<https://perma.cc/LEZ7-BBZR>].

⁸² *Id.*

⁸³ Karen de Jong, *Culture as an Obstacle to Universal Human Rights? The Encounter of the Royal Netherlands Army with the Afghan Culture in Uruzgan* (2018) (unpublished Master thesis, Utrecht University) (on file with the Utrecht University Repository).

⁸⁴ *Id.*

⁸⁵ Paul Lewis, *The Right to Intervene for a Humanitarian Cause*, N.Y. TIMES (July 12, 1992), <https://www.nytimes.com/1992/07/12/weekinreview/ideas-trends-the-right-to-intervene-for-a-humanitarian-cause.html> [<https://perma.cc/B8RE-3PDR>].

⁸⁶ *Id.*

⁸⁷ *Id.*

following World War II; a speech delivered by President Jimmy Carter in 1977 at the Notre Dame commencement ceremony notably highlighted this viewpoint:

First, we have reaffirmed America's commitment to human rights as a fundamental tenet of our foreign policy. In ancestry, religion, color, place of origin, and cultural background, we Americans are as diverse a nation as the world has even seen. No common mystique of blood or soil unites us. What draws us together, perhaps more than anything else, is a belief in human freedom. We want the world to know that our Nation stands for more than financial prosperity.

....

Nonetheless, we can already see dramatic, worldwide advances in the protection of the individual from the arbitrary power of the state. For us to ignore this trend would be to lose influence and moral authority in the world. To lead it will be to regain the moral stature that we once had.

....

Throughout the world today, in free nations and in totalitarian countries as well, there is a preoccupation with the subject of human freedom, human rights. And I believe it is incumbent on us in this country to keep that discussion, that debate, that contention alive. No other country is as well-qualified as we to set an example.⁸⁸

President Carter "effectively usher[ed] in human rights as a central part of U.S. foreign policy."⁸⁹ Although his statements took place in 1977, it is clear that gross human rights violations remain an issue on the global stage, most importantly in the form of *bacha bazi*. The U.S. government has demonstrated a commitment to human rights in the past and therefore must continue to do so today.

U.S.-led coalition forces in Afghanistan are bound by applicable customary and conventional international humanitarian and human rights laws.⁹⁰ UN Security Council Resolution 1746 called for "full respect for human rights and international humanitarian law throughout Afghanistan" and required "all parties to uphold international humanitarian and human rights law and to ensure the protection of civilian life."⁹¹ Although Security Council resolutions are merely recommendations

⁸⁸ *Jimmy Carter Promotes Human Rights*, VOICES & VISIONS (May 22, 1977), <http://vandvreader.org/jimmy-carter-notre-dame-commencement-address-22-may-1977/> [<https://perma.cc/T683-S4EA>].

⁸⁹ *Id.*

⁹⁰ *International Humanitarian Law: Answers to Your Questions*, INT'L COMMITTEE RED CROSS 82 (Dec. 2014), <https://www.icrc.org/en/doc/assets/files/other/icrc-002-0703.pdf> [<https://perma.cc/9DPU-KNPQ>].

⁹¹ S.C. Res. 1746, ¶ 18, 25 (Mar. 23, 2007).

and not laws, the weight which they hold is of symbolic and political importance.⁹² The General Assembly represents a “town meeting of the world” in which many countries are able to voice their opinions, discuss global issues, and articulate formal representations of their collective decisions through resolutions.⁹³ The “‘world opinion’ expressed in the resolutions can be symbolic in two main ways: it can have an invaluable influence on the behaviour [sic] of states and stigmatize or isolate the practice of states that do not conform to it.”⁹⁴ Fifteen countries served on the Security Council, which produced Resolution 1746, including the U.S., China, and Russia.⁹⁵ As three of the most powerful nations on earth and nations that do not always agree politically, a collective resolution representing their opinion holds enormous weight on the world stage. Clearly, bacha bazi was recognized as a significant problem in 2007, which required discourse on a global stage. Since 2007, however, the practice of bacha bazi has not been actively combatted, nor has it shown any signs of slowing.⁹⁶

Alternatively, the International Law of War may be applicable to bacha bazi. The “Law of War” is defined as “[t]hat part of international law that regulates the conduct of armed hostilities.”⁹⁷ The purpose of the Law of War is to prevent unnecessary suffering, safeguard certain fundamental human rights of those involved in a conflict, and to ultimately restore peace.⁹⁸ The Law of War, also known as the Law of Armed Conflict, is an international body of law supported by both the Hague and Geneva Conventions.⁹⁹ The Hague Conventions relate to the “methods of war,” and the Geneva Conventions “concern respecting and protecting [the] victims of conflict.”¹⁰⁰ The Geneva Convention Treaty IV is directed to civilians specifically and is applicable in Afghanistan because it takes effect during international armed conflict of any kind “which may arise between two or more parties to the treaty.”¹⁰¹ Both Afghanistan and the U.S. were original parties to the Geneva Conventions in 1956 and 1955 respectively.¹⁰² Assuming this applicability, U.S. service members would be legally required to intervene with respect to instances of bacha bazi if the young boys qualify as a protected class under Treaty IV.¹⁰³ Addressing civilians, Treaty IV

⁹² Céline Van den Rul, *Why Have Resolutions of the UN General Assembly if They are Not Legally Binding?*, E-INT’L REL. (June 16, 2016), <https://www.e-ir.info/2016/06/16/why-have-resolutions-of-the-un-general-assembly-if-they-are-not-legally-binding/> [<https://perma.cc/7ZKN-G4D7>].

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ See *Current Members: Permanent and Non-Permanent Members*, UNITED NATIONS SECURITY COUNCIL, <https://www.un.org/securitycouncil/content/current-members> [<https://perma.cc/YF8U-CKB2>].

⁹⁶ See Nordland, *supra* note 2.

⁹⁷ U.S. JOINT CHIEFS OF STAFF, JOINT PUB. NO. 1-04, LEGAL SUPPORT TO MILITARY OPERATIONS GL-3 (2016), https://www.jcs.mil/Portals/36/Documents/Doctrine/pubs/jp1_04.pdf [<https://perma.cc/FNQ9-G2VT>].

⁹⁸ *Id.* at II-2.

⁹⁹ *Legal Obligation of U.S. Armed Forces to Intervene in Acts of Bacha Bazi in Afghanistan*, CONG. RES. SERV. (Oct. 22, 2015, 12:31 PM), <https://fas.org/sgp/crs/natsec/bacha.pdf> [<https://perma.cc/8YBQ-CCXC>].

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Treaties, States Parties and Commentaries*, INT’L COMMITTEE RED CROSS, https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/States.xsp?xp_viewStates=XPages_NORMStatesParties&xp_treatySelected=380 [<https://perma.cc/PE99-XKCF>].

¹⁰³ See *Legal Obligation of U.S. Armed Forces to Intervene in Acts of Bacha Bazi in Afghanistan*, *supra* note 999.

is a “complex document, which provides different protections for the ‘whole of the population’ and ‘protected persons.’”¹⁰⁴ “Protected persons are afforded the most protections including, but not limited to, respect for their persons, respect for their honor, and respect for family rights.”¹⁰⁵ An important stipulation built into the document, however, “is that the concept of protected persons . . . respects a State’s relations with its own nationals.”¹⁰⁶ That is, if bacha bazi is culturally accepted, the boys would not qualify as protected persons and domestic practices in Afghanistan govern the conduct of U.S. service members.¹⁰⁷

IV. CURRENT ACTIONS

A. U.S. Lawmakers

“The Sigar report recommended restricting the use of that ‘notwithstanding clause’ to evade the provisions of the Leahy Law.”¹⁰⁸ In September of 2018, U.S. Senator Rand Paul offered an amendment in committee that would withhold all American funding of Afghan forces until a ‘U.S[.] government watchdog in Afghanistan could verify those forces were not using children as child soldiers or sex slaves.’”¹⁰⁹ Unfortunately, “he was opposed by Senate Foreign Relations Committee leaders,” despite the fact that the U.S. has allocated nearly five billion dollars in aid to Afghan security forces in 2019.¹¹⁰ Senator Paul’s plan would have called for Sigar to verify that no child soldiers or sex slaves were utilized by any individual or unit within the Afghan National Security Forces before receiving funds from the U.S.¹¹¹ In response, the Chairman of the Senate Foreign Relations Committee, Senator Bob Corker, backed a counter-amendment to allow the funding because “such a withdrawal of U.S. support would be problematic from a ‘broad U.S. national security standpoint.’”¹¹²

The manner in which Congress finally addressed the issue of funding these Afghan units was the removal of the “notwithstanding” language, and the substitute

¹⁰⁴ *Id.* (quoting Geneva Convention Relative to the Protection of Civilian Persons in Time of War art. 13, 27, Aug. 12, 1949, 6 U.S.T. 3516, 75 U.N.T.S. 287).

¹⁰⁵ *Id.* (quoting Geneva Convention Relative to the Protection of Civilian Persons, *supra* note 104, 6 U.S.T. at 3536, 75 U.N.T.S. at 306).

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ Nordland, *supra* note 2.

¹⁰⁹ Jack Hunter, *The War in Afghanistan is Enabling Pedophilia*, AM. CONSERVATIVE (Oct. 5, 2018), <https://www.theamericanconservative.com/articles/the-war-in-afghanistan-is-enabling-pedophilia> [<https://perma.cc/FV7K-FLJD>].

¹¹⁰ Kristina Wong, *Corker, Menendez Scuttle Rand Paul Efforts to Block Billions in U.S. Funding for Afghan Forces Sexually Abusing Boys*, BREITBART (Oct. 1, 2018), <https://www.breitbart.com/politics/2018/10/01/corker-menendez-scuttle-rand-paul-efforts-to-block-billions-in-u-s-funding-for-afghan-forces-sexually-abusing-boys/> [<https://perma.cc/V576-PFDJ>].

¹¹¹ Hunter, *supra* note 110.

¹¹² Wong, *supra* note 110. The counter-amendment backed by Senator Corker instead “require[d] the Departments of Defense and State to report [broadly] on implementation of recommendations” from the Sigar report, vice the “unachievable standard” that Sigar verify *each unit or individual* had zero instances of sexual slavery before receiving funds. *Id.*

of language which *continued* to allow funding to units otherwise prohibited under the provisions of the Leahy Law provided that: “(1) a denial of such assistance would present significant risk to U.S. or coalition forces or significantly undermine United States national security objectives in Afghanistan; and (2) the Secretary has sought a commitment by the Government of Afghanistan to take all necessary corrective steps.”¹¹³ Additional requirements were also imposed, which include that the Secretary of Defense must report every 120 days on the status of corrective steps taken by the Government of Afghanistan, and that if necessary corrective steps were not completed within one year, the authority to violate the Leahy Law and provide assistance to a unit shall no longer apply.¹¹⁴ While it is certainly a step in the right direction that Congress has expressly limited the violation of the Leahy Law to one year if corrective steps are not taken, Congress is in the same breath expressly authorizing *a full year* of known child sexual abuse. In other words, U.S. service members and Department of Defense officials may be fully aware of these atrocities for some time before action can officially be taken to remove funding. There is no power for Congress to remove funding before the one-year mark.

This blatant disregard for the safety of underage boys in Afghanistan seemingly answers the previously posed question: protecting its interests in the Middle East is more important to the U.S. government than protecting the young boys who are victimized by bacha bazi. Again, this is in direct conflict with the provisions of the Leahy Law *requiring* U.S. aid to be cut off to Afghan “unit[s] implicated in gross human rights violations.”¹¹⁵ Americans point with pride to girls who have been enrolled in school since the Taliban was defeated,¹¹⁶ but what of the mass, institutionalized pedophilia practice?

U.S. conduct moving forward matters immensely as “we are a practicing democracy with both philosophical and geopolitical reasons to encourage the democratic aspirations of all peoples.”¹¹⁷ Democracy cannot exist in a world in which major superpowers, such as the U.S., do not follow international laws.¹¹⁸ It is counterproductive, as democracy cannot flourish in a “lawless climate.”¹¹⁹

B. Afghanistan: Government Action & Directives

Following the fall of the Taliban in 2001, bacha bazi returned openly in Afghan society.¹²⁰ The problem immediately became “so widespread that the government [] issued a directive barring ‘beardless boys’—a euphemism for under-age sex

¹¹³ Department of Defense Appropriations Act, H.R. 6157, 115th Cong. (2018) (enacted).

¹¹⁴ *Id.*

¹¹⁵ Nordland, *supra* note 2.

¹¹⁶ See, e.g., CLAYTON THOMAS, CONG. RESEARCH SERV., R45818, AFGHANISTAN: BACKGROUND AND U.S. POLICY 45 (2019); Lara Jakes, *Peace Road Map for Afghanistan will let Taliban Negotiate Women's Rights*, N.Y. TIMES (Aug. 16, 2019), <https://www.nytimes.com/2019/08/16/world/middleeast/afghanistan-peace-womens-rights.html> [<https://perma.cc/U6PD-T9UJ>].

¹¹⁷ Cutler, *supra* note 32, at 96.

¹¹⁸ See *id.* at 96–97.

¹¹⁹ *Id.* at 96.

¹²⁰ Drury, *supra* note 17.

partners—from police stations, military bases and commanders' compounds."¹²¹ Yet, "archaic social traditions and deep-seated gender norms" in the Afghan culture have caused the government much trouble in preventing the practice.¹²² In fact, since 2001, coalition forces have observed that many Afghan families are "keen to provide a son to a warlord or government official . . . in order to gain familial prestige."¹²³ These families have "full knowledge of the sexual ramifications," as well as the government officials who accept the boys as bribes or in exchange for money.¹²⁴ Following criticism from the United Nations in 2011, "Afghan officials formally agreed to outlaw" bacha bazi.¹²⁵ The government promised to create a plan for sweeping changes into the "investigation and prosecution of perpetrators of under-age recruitment" of child soldiers and "sexual violence."¹²⁶ In 2014, the Afghan Independent Human Rights Commission (AIHRC) conducted a national inquiry into bacha bazi, which consisted of "interviews with perpetrators as well as with victims" and data collection across seventy-one focus group sessions and fourteen public hearing sessions.¹²⁷ As a result of their research and data collection, the AIHRC created over ten specific recommendations to the Afghan government, including the criminalization of bacha bazi practices by modifying the Penal Code.¹²⁸

Even in the wake of the formal inquiry by the AIHRC—a government entity created by the Afghan Constitution¹²⁹—"the government's ability and willingness to internally enforce laws protecting children" had been largely "non-existent."¹³⁰ The government finally revised the federal penal code in 2017, criminalizing bacha bazi for the first time in the history of Afghanistan.¹³¹ In an entire chapter dedicated to banning the practice, "the perpetrators . . . could face up to seven years in jail while those [who] keep multiple boys below age 12 could face life imprisonment."¹³²

Notwithstanding the fact that bacha bazi is now technically criminalized in Afghanistan, the judiciary and law enforcement have not made major strides in putting an end to the practice fully. In fact, experts claim the practice is still on the rise.¹³³ Unfortunately, the perception of the Afghan people is that ending bacha bazi

¹²¹ Smith, *supra* note 49.

¹²² Chris Mondloch, *Bacha Bazi: An Afghan Tragedy*, FOREIGN POL'Y (Oct. 28, 2013, 3:53 PM), <https://foreignpolicy.com/2013/10/28/bacha-bazi-an-afghan-tragedy/> [<https://perma.cc/638X-WVPS>].

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ *Afghanistan Signs Pact with UN to Prevent Recruitment of Child Soldiers*, UNITED NATIONS NEWS (Jan. 30, 2011), <https://news.un.org/en/story/2011/01/365572-afghanistan-signs-pact-un-prevent-recruitment-child-soldiers#Uht-SxuUQwM> [<https://perma.cc/Z2NN-945V>].

¹²⁷ MOHAMMAD HOSSEIN SARAMAD ET AL., AFGHAN INDEP. HUMAN RIGHTS COMM'N, REP. NO. 1393, CAUSES AND CONSEQUENCES OF BACHA BAZI IN AFGHANISTAN 3 (2014), <https://www.refworld.org/publisher,AIHRC,,5694c3db4,0.html> [<https://perma.cc/57VJ-9NLL>].

¹²⁸ *Id.* at 80.

¹²⁹ *A Brief Introduction of AIHRC and its Programs and Activities*, AFG. INDEP. HUMAN RIGHTS COMMISSION, <https://www.aihrc.org.af/home/introduction> [<https://perma.cc/ZZA4-32C7>].

¹³⁰ Mondloch, *supra* note 122122.

¹³¹ Shajjan, *supra* note 27.

¹³² *Id.*

¹³³ Jared Ferrie, *Human Trafficking on the Rise in Afghanistan Despite New Laws*, THOMAS REUTERS FOUND. NEWS (Mar. 29, 2018, 18:32 GMT), <http://news.trust.org/item/20180329183316-v9udy/> [<https://perma.cc/NPA7-2NUY>].

is simply “not a priority for the Afghan government.”¹³⁴ “There is no court dedicated to hearing human trafficking cases, and little public education about trafficking and where people should go to report it.”¹³⁵

C. Case Study: Major Jason Brezler, USMC

While deployed to a remote base in Helmand province, Afghanistan in 2010, Marine Major Jason Brezler identified a local police chief as a threat to not only the local civilians he was assigned to protect, but also to his own Marines.¹³⁶ The police chief, Sarwar Jan, was allegedly linked to the Taliban and was also a “pedophile who preyed on local boys.”¹³⁷ Major Brezler “was able to kick Sarwar Jan off the base,” but was informed nearly two years later via email that the dangerous pedophile had returned.¹³⁸ From his public budgeting class at the University of Oklahoma, where a now reservist Major Brezler was pursuing a master’s degree, he received an email stating “SARWAR JAN IS BACK.”¹³⁹ It was a forwarded email from a Marine acquaintance in Helmand.¹⁴⁰ Major Brezler quickly located the dossier on Sarwar Jan on his computer and attached it to the email, hitting reply all.¹⁴¹ Just seventeen days after Major Brezler’s email warning, one of Sarwar Jan’s underage “sex slaves” killed three unarmed Marines at the base gym in Helmand.¹⁴²

The dossier was legally classified military information, however, and it was not to be transmitted via personal email.¹⁴³ Major Brezler was subsequently investigated by the Naval Criminal Investigative Service (NCIS) and charged with mishandling of classified documents.¹⁴⁴ He was referred to a military Board of Inquiry regarding his violations of the Uniform Code of Military Justice (UCMJ) and was ordered to

¹³⁴ *Id.* (quoting Wali Mohammad Kandiwal, the author of a recent study on the new Afghan law relating to bacha bazi).

¹³⁵ *Id.* (citing Kandiwal).

¹³⁶ Merrit Kennedy, *Legal Win for Marine Who Used Classified Information in an Email Warning*, NPR (Dec. 6, 2016, 5:36 PM), <https://www.npr.org/sections/thetwo-way/2016/12/06/504587921/legal-win-for-marine-who-used-classified-information-in-an-email-warning> [<https://perma.cc/6J54-SVDK>].

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ *Brezler v. Mills*, 86 F. Supp. 3d 208, 211 (E.D.N.Y. 2015).

be honorably separated.¹⁴⁵ Major Brezler maintained since the events that his punishment was retaliatory, perhaps part of an elaborate cover-up to conceal that military officials knew both how dangerous Sarwar Jan was and that he was a known perpetrator of bacha bazi who the government failed to bring to justice.¹⁴⁶ In 2016, a federal judge overturned the discharge on the grounds that “the government had not granted [Major] Brezler full access to records related to his claim,” but declined to rule on whether the board of inquiry’s recommendation was an act of retaliation.¹⁴⁷ Did the U.S. Navy attempt to silence Major Brezler as a cover-up for their failure to put an end to a known sexual predator’s actions? The American public may never know, but it certainly appears suspicious given the fact that because government officials failed to heed his warning, three service members were killed by one of the bacha bazi boys. The family of one of the slain Marines, Lance Corporal Gregory Buckley, Jr., filed a lawsuit against the Marine Corps and the Department of Defense seeking classified information about the details surrounding their son’s death.¹⁴⁸ The family also alleged that they believed the military had unduly punished the whistleblower, Major Brezler, who tried to warn the Marines in Helmand of the danger of Sanwar Jan prior to their son’s death.¹⁴⁹

V. THE WAY FORWARD

*Figure 1: The New Pentagon Papers*¹⁵⁰

The U.S.-led coalition in Afghanistan has largely “built a government around a ‘lesser evil,’” in that they have empowered current leadership—consisting of many known pedophiles—“in lieu of the extremist . . . Taliban.”¹⁵¹ This will likely decrease international support for Afghanistan’s continual development.¹⁵² The solution for erasing bacha bazi from



¹⁴⁵ *Id.*

¹⁴⁶ See Jeff Schogol, *Marine Major Who Warned of Danger Before Insider Attack Wins Court Case*, MARINE CORPS TIMES (Dec. 6, 2016), <https://www.marinecorpstimes.com/news/your-marine-corps/2016/12/06/marine-major-who-warned-of-danger-before-insider-attack-wins-court-case/> [https://perma.cc/3PQH-3WAY]; see also *Brezler v. Mills*, 220 F. Supp. 3d 303, 314 (E.D.N.Y. 2016); *Brezler v. Mills*, 86 F. Supp. 3d at 213–14.

¹⁴⁷ Schogol, *supra* note 146.

¹⁴⁸ *Family of Murdered Marine Suing Military Over Alleged Cover-up*, FOX NEWS (Dec. 29, 2014), <https://www.foxnews.com/politics/family-of-murdered-marine-suing-military-over-alleged-cover-up> [https://perma.cc/P7JE-BLGB].

¹⁴⁹ *Id.*

¹⁵⁰ C. Danielle Bizier, *Stay TOONED: A Sad History of Looking the Other Way*, SOFREP NEWS (Mar. 13, 2018), <https://web.archive.org/web/20180613120631/https://sofrep.com/100739/stay-tooned-a-sad-history-of-looking-the-other-way/> [https://perma.cc/3T2X-8PSA].

¹⁵¹ Mondloch, *supra* note 122.

¹⁵² *Id.*

Afghanistan is twofold. First, and most importantly, the Afghan government must continue to modernize. The legal system must enforce the new laws criminalizing the practice, from the police to the judiciary. The current administration must focus inward and expel those in positions of power who are known to abuse young boys and create a united front of zero tolerance. “If the central government can ensure its representatives at the local level will cease their engagement in *bacha bazi*, the social norms are bound to change as well.”¹⁵³ Further, the government can “attack the issue from an ethno-cultural standpoint.”¹⁵⁴ Outreach to rural Pashtun communities is critical because the “legitimacy of the government is often eclipsed” in these areas “by the power of warlords and tribal leaders.”¹⁵⁵ The Pashtun are the largest ethnic group in Afghanistan saddling the rural border with Pakistan—in fact, many live within Pakistan.¹⁵⁶ Pashtun society is sheltered by a pastoral setting in which many do not speak Arabic and “allow social customs to trump religious values.”¹⁵⁷ Tribal leaders have remained relatively secular and have widely practiced *bacha bazi*.¹⁵⁸ Therefore, it is not simply a problem in the Islamic culture within Afghanistan, which represents a U.S.-backed central government, but also the rural ethnic groups. Eliminating *bacha bazi* “will finally occur when a pedophile-free Afghan government is able to more closely connect the country’s urban centers to its rural [Pashtun] countryside.”¹⁵⁹ Only then will social norms begin to change and incorporate social justice.¹⁶⁰ Yet, this is largely out of the control of the U.S. government. This is a solution that must come from within.

The U.S., however, may be able to “force the hand” of Afghan officials to stimulate societal change by completing the second necessary step in reaching a solution: sticking to our word and removing monetary aid in accordance with the Leahy Law. In 2004, after the U.S. intervened in Iraq, President Bush remarked that “[e]very woman in Iraq is better off because the rape rooms and torture chambers of Saddam Hussein are forever closed.”¹⁶¹ Ending Saddam Hussein’s many human rights abuses was a major selling point of the Iraq War and the Bush administration recognized the importance of the justice served. How, fifteen years later, are we unwilling to prevent continued human rights violations of a similar severity in neighboring Afghanistan? How are we able to justify active monetary funding to known violators in which American tax dollars are used to enable pedophilia?

¹⁵³ *Id.*

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

¹⁵⁶ Joseph A. Tainter & Donald G. MacGregor, *Pashtun Social Structure: Cultural Perceptions and Segmentary Lineage Organization*, MACGREGOR BATES, INC. (Aug. 3, 2011), <https://apps.dtic.mil/dtic/tr/fulltext/u2/a553265.pdf> [<https://perma.cc/H856-F66B>].

¹⁵⁷ Noman Ansari, *The Filthy Culture of Bacha Bazi in Afghanistan*, EXPRESS TRIB. BLOGS (Sep. 21, 2015), <https://blogs.tribune.com.pk/story/29547/the-filthy-culture-of-bacha-bazi-in-afghanistan/> [<https://perma.cc/3S5J-JMC2>].

¹⁵⁸ *Id.*

¹⁵⁹ Mondloch, *supra* note 122122.

¹⁶⁰ *Id.*

¹⁶¹ Hunter, *supra* note 109.

The current administration has “articulated a vision of foreign policy” that places an emphasis on “America First.”¹⁶² Foreign dignitaries invited to the White House in the past two years “included those with poor reputations on human rights, including Egyptian President Abdel Fattah al-Sisi . . . and Turkish President Recep Erdoğan.”¹⁶³ The current administration has also updated its policy in Afghanistan to expand U.S. troops and airstrikes and loosen the rules of engagement on the battlefield.¹⁶⁴ The administration has remained silent on the issue of bacha bazi and the application of the Leahy Law, however, despite demands from congressional members to explain our continued presence in Afghanistan in the face of these atrocities.¹⁶⁵ Alarming, the U.S. chose to depart early from the United Nations Human Rights Council, effective June 19, 2018.¹⁶⁶ All of these facts point to the U.S. moving in the wrong direction with respect to bacha bazi and failing to recognize our duty as decent human beings to protect underage boys. Through the advancement of a foreign policy that avoids an emphasis on human values, which may “create[] obstacles to [] our national interests,” the U.S. is sending a message to oppressed people across the world that they should not “look to the United States for hope.”¹⁶⁷ Increasingly, the current administration is moving toward “forging relationships with [] oppressors” in order to “serve [] security and economic interests.”¹⁶⁸

If the current administration will not alter its stance on human rights violations in Afghanistan in order to maintain power in the region, then Congress must pressure the White House for change. Congress created the “notwithstanding clause” providing a loophole to the Leahy Law, and Congress holds the power to change it.¹⁶⁹ First, Congress should pen a letter to the President demanding change, similar to that which was written to Secretary of State Henry Kissinger regarding “strong opposition to providing military assistance to repressive governments.”¹⁷⁰ The letter reads, in part, as follows:

In the absence of extraordinary circumstances, we do not believe that long-term U.S. foreign policy interests are served by maintaining supportive relationships with oppressive governments, especially in the military field, since military power is directly associated with the exercise of governmental control over the civilian population.

¹⁶² *United States: Events of 2017*, HUM. RTS. WATCH, <https://www.hrw.org/world-report/2018/country-chapters/united-states> [<https://perma.cc/FGB2-GLMC>].

¹⁶³ *Id.*

¹⁶⁴ *Id.*

¹⁶⁵ Rebecca Kheel, *GOP Rep on Afghanistan: ‘Why are we Still Shedding Our Soldiers’ Blood for Pedophiles?’*, HILL (Feb. 6, 2018, 11:00 AM), <https://thehill.com/policy/defense/372516-gop-rep-on-afghanistan-why-are-we-still-shedding-our-soldiers-blood-for> [<https://perma.cc/69ZT-TKDK>].

¹⁶⁶ *Consequences of the U.S. Departure from the Human Rights Council*, INT’L JUST. RESOURCE CTR. (July 10, 2018), <https://ijrcenter.org/2018/07/10/consequences-of-the-u-s-departure-from-the-human-rights-council/> [<https://perma.cc/4EJ2-LX7F>].

¹⁶⁷ John McCain, *Opinion: Why We Must Support Human Rights*, N.Y. TIMES (May 8, 2017), <https://www.nytimes.com/2017/05/08/opinion/john-mccain-rex-tillerson-human-rights.html> [<https://perma.cc/4QM4-FMKB>].

¹⁶⁸ *Id.*

¹⁶⁹ See Nordland, *supra* note 2.

¹⁷⁰ Sarah B. Snyder, “A Call for U.S. Leadership”: *Congressional Activism on Human Rights*, 37 DIPLOMATIC HIST. 372, 387–88 (2013).

Unless U.S. foreign policies—especially military assistance policies—more accurately reflect the traditional commitment of the American people to promote human rights, we will find it increasingly difficult to justify support for foreign aid legislation to our constituents.¹⁷¹

This letter should be published to the American people in an effort to show that Congress is mindful that by providing support to Afghan security forces, the U.S. military and the American people could be viewed as complicit in the human rights abuses. The outspoken Senator Rand Paul should work closely with his Kentucky Senatorial counterpart, Senate Majority Leader Mitch McConnell, to raise awareness of bacha bazi among their peers and in the White House. Only with increased knowledge of these violations can change be made. The U.S. should not continue to pursue a foreign policy inconsistent with the values of the American people. The executive branch has historically fluctuated on its stance with regards to human rights and foreign policy, “depending on who occupied the White House.”¹⁷² Persistence and congressional attention to issues is essential to success in stopping the continued support of the oppressive Afghan regime and its violations. Concern for international human rights runs deep in the members of Congress, and they have the ability to create a movement to put an end to bacha bazi. U.S. government funding of Afghan security forces must be stopped until bacha bazi has ended.

Finally, in accordance with the Sigar report, the Secretary of Defense should “[e]stablish and implement a records management policy for all alleged gross violations of human rights in Afghanistan.”¹⁷³ The Secretary of Defense should then be held responsible for maintaining that documentation and ensuring its credibility.¹⁷⁴ The Ambassador to the United Nations should have access to this information at all times in order to ensure we are sharing information with our NATO counterparts who are also serving in Afghanistan.

VI. CONCLUSION

In conclusion, “[i]t is evident that despite the efforts of international organizations such as the United Nations” to advance “their capacity to monitor and report” human rights violations in international conflicts, the fact remains that the offenders are rarely held liable for their crimes.¹⁷⁵ Abuses in Afghanistan are widespread and virtually unchecked, leading to the exploitation of thousands of young boys. Both the international community as well as the U.S. government have failed to protect them, and the reprehensible practice of bacha bazi will continue unless swift action is taken. The current U.S. administration seems unwilling to take a stance in which it prioritizes the protection of human rights over that of national

¹⁷¹ *Id.* at 388 (quoting Letter from Donald M. Fraser et. al., U.S. Cong., to Henry A. Kissinger, U.S. Sec’y of State (Sept. 18, 1974)).

¹⁷² Snyder, *supra* note 170170, at 397.

¹⁷³ INSPECTOR GEN., U.S. DEP’T OF DEF., REP. NO. DODIG-2018-018, IMPLEMENTATION OF THE DoD LEAHY LAW REGARDING ALLEGATIONS OF CHILD SEXUAL ABUSE BY MEMBERS OF THE AFGHAN NATIONAL DEFENSE AND SECURITY FORCES iii (2017).

¹⁷⁴ *Id.*

¹⁷⁵ Martin & Shaheen, *supra* note 4, at 195.

interests and foreign policy. The stance that the American people and our national interests should take precedence over the interests of non-Americans, or “America First,” is compelling. Our wealth and power as a nation, however, is not encumbered “by the demands of international justice, societal morality, and a conscience.”¹⁷⁶ By denying justice to the underage boys of Afghanistan and failing to hold their oppressors accountable for their criminal actions, we deny their aspirations for hope.¹⁷⁷ And worse, we “invite their enduring resentment.”¹⁷⁸ Congress has both the ability and desire for change. They must honor the provisions of the Leahy Law by reversing their decision under the “notwithstanding clause” and its 2018 progeny to remove an exception granting continued monetary support for Afghan security forces with credible instances of gross human rights violations. “With the looming withdrawal of NATO troops and a persistent insurgent threat, Afghanistan is in a precarious position.”¹⁷⁹ Notwithstanding the other issues surrounding the country, U.S. foreign policy must prioritize human rights. This is the start of the recovery of Afghanistan and its development into a functional nation.

¹⁷⁶ McCain, *supra* note 167.

¹⁷⁷ *See id.*

¹⁷⁸ *Id.*

¹⁷⁹ Mondloch, *supra* note 122.